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State v. Larios-Mendoza Respondent's Brief Dckt. 44084

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44084
Plaintiff-Respondent,)	
)	Minidoka County Case No.
v.)	CR-2015-2020
)	
RAMON E. LARIOS-MENDOZA,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Larios-Mendoza failed to establish that the district court abused its discretion by imposing concurrent unified sentences of life, with 20 years fixed, upon his guilty pleas to rape and lewd conduct with a minor under 16?

Larios-Mendoza Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Fifty-nine-year-old Larios-Mendoza sexually assaulted his two young daughters,

nine-year-old S.L. and 10-year-old D.L. (PSI, pp.2-4, 27.¹) He vaginally and anally raped S.L. on several occasions over a four-month period of time when she was eight years old. (PSI, pp.3, 27-28, 31-32, 38.) Larios-Mendoza “would carry [S.L.] into his room,” prevent her from leaving the room, removed her clothing, and “touch her with his hands and ‘hump’ her.” (PSI, p.28.) S.L. stated that she “would try [to] kick [Larios-Mendoza] off of her but he would move her legs,” and she “would try [to] push [him] off but [he] would hold her arms down.” (PSI, p.28.)

Larios-Mendoza vaginally and anally raped D.L. beginning when she between the ages of approximately six years old and 10 years old. (PSI, p.34.) Larios-Mendoza “would have her watch adults having sex on the desktop computer and then take her to his room” and lock the door, remove her pants, “pin [her] hands down,” and rape her. (PSI, pp.34-35.) D.L. “would tell [Larios-Mendoza] that she didn’t want to have sex with him”; however, Larios-Mendoza “told [D.L.] no and would continue having sex with her.” (PSI, p.35.)

Larios-Mendoza also sexually abused his seven-year-old son, B.L. (PSI, pp.8, 44.) B.L. reported that Larios-Mendoza “rubbed” his anus and “touched his ‘privates.’” (PSI, p.44.) Furthermore, the children’s mother (Larios-Mendoza’s wife) told officers that Larios-Mendoza’s adult daughter from his previous marriage informed her that Larios-Mendoza sexually assaulted her when she was a minor and he “had warrants in Mexico for sexual assault.” (PSI, pp.3, 33.) Officers subsequently contacted Larios-

¹ PSI page numbers correspond with the page numbers of the electronic file “Larios-Mendoza confidential exhibit PSI dated 1-19-16.pdf.”

Mendoza's adult daughter, 35-year-old L.C., who reported that she "is the youngest of 3 sisters from [Larios-Mendoza's] first marriage," and that she and her two sisters "had all been molested by [Larios-Mendoza]." (PSI, pp.8, 33.) L.C. stated that she "was approximately 6 years old when the abuse occurred," and that Larios-Mendoza "threatened her" and "told her that he was going to kill her mother and marry her." (PSI, p.33.) L.C. further reported that, "after her mother and father divorced, [Larios-Mendoza] married a woman with a 12 year old daughter. ... [Larios-Mendoza] raped the 12 year old who ended up pregnant and having a child with [Larios-Mendoza]." (PSI, p.33.) L.C. advised that Larios-Mendoza later "illegally fled to the United States and into Arizona due to the pending case against him for the rape of the 12 year old." (PSI, p.33.)

Additionally, S.M., a friend of Larios-Mendoza's children, reported that Larios-Mendoza had sexually abused her when she was between the ages of "6 or 7" and eight years old. (PSI, p.42.) S.M. advised that she and Larios-Mendoza's daughter "are best friends" and she used to "walk from school to [Larios-Mendoza's residence] after school"; however, she eventually "stopped going over to [Larios-Mendoza's] house because, "every time she was at the residence," he "would attempt to keep her from playing with [his] children and touch her inappropriately." (PSI, p.42.) S.M. stated that Larios-Mendoza "touched her 'crotch' with his hands," that he "would grab her hand" and force her to "put her hands down his pants to touch his crotch," and that, when she "would try to play with her friend," Larios-Mendoza "would hold onto her and not let her." (PSI, pp.42-43.)

The state charged Larios-Mendoza with three counts of rape and one count of lewd conduct with a minor under 16 for the sexual assaults against S.L. and D.L. (R., pp.40-44.) Pursuant to a plea agreement, Larios-Mendoza pled guilty to one count of rape and to lewd conduct with a minor under 16, the state dismissed the remaining charges and agreed to not file charges with respect to B.L. and S.M., and the parties agreed that the parents of all of the minor victims could make victim impact statements at sentencing. (R., pp.51, 53-55; 10/26/15 Tr., p.5, L.17 – p.6, L.9.) The district court imposed concurrent unified sentences of life, with 20 years fixed. (R., pp.74-77.) Larios-Mendoza filed a notice of appeal timely from the judgment of conviction. (R., pp.82-84.)

Larios-Mendoza asserts his sentences are excessive because he pled guilty to the instant offenses, which were his first two felony convictions; because the psychosexual evaluator “deemed [him] to be a low risk to re-offend” despite his deceptive polygraph test; and because, although he told the psychosexual evaluator that he “would not benefit from sex offender treatment,” he later told the court that he needed “some help” and “treatments.” (Appellant’s brief, pp.3-4; PSI, p.61-62, 64; 2/22/16 Tr., p.25, Ls.22-23.) The record supports the sentences imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant’s entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is

within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum sentence for each of the offenses of rape and lewd conduct with a minor under 16 is life in prison. I.C. §§ 18-1508, -6104. The district court imposed concurrent unified sentences of life, with 20 years fixed, both of which fall well within the statutory guidelines. (R., pp.74-77.) At sentencing, the state addressed the heinous nature of the offenses, the great harm done to the victims, Larios-Mendoza's dishonesty and extreme minimization of his criminal conduct, and his belief that he does not need "help to control his sexual impulses and behaviors." (2/22/16 Tr., p.15, L.13 – p.19, L.2 (Appendix A).) The district court subsequently articulated its reasons for imposing Larios-Mendoza's sentences. (2/22/16 Tr., p.26, L.7 – p.31, L.16 (Appendix B).) The state submits that Larios-Mendoza has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm Larios-Mendoza's convictions and sentences.

DATED this 28th day of October, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of October, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JASON C. PINTLER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

<p>1 Mexico, their children there are in danger as well. 2 An innocent child is an innocent no matter whether 3 it's here or there. So I just ask that you find it 4 in your heart to keep him in there as long as 5 possible. 6 That's about all I can say. 7 THE COURT: Thank you for your comments. 8 MR. HEMSLEY: Your Honor, in State versus 9 Heffern, 130 Idaho 946, it indicates that a trial 10 judge may consider a lot of different factors in 11 imposing sentence. And, I think, the Court hit on 12 that in citing the rules of evidence. 13 In the broad spectrum of the factors that 14 this Court can consider, including the criminal past 15 history. And with due caution, the existence of the 16 defendant's alleged criminal activity for which no 17 charges have been charged or where charges have been 18 dismissed. And the availability of that broad 19 spectrum of information enables the sentencing court 20 to impose a punishment that fits both the crime and 21 the individual here. 22 Now, Your Honor, the Court has a lot of 23 information in this presentence investigation to 24 consider; and as indicated by case law, it is 25 relevant, even if some should be considered with</p> <p style="text-align: center;">15</p>	<p>1 define their lives. 2 And I have spoken with them and indicated 3 to them that none of this that happened is their 4 fault, and none of the consequence to Mr. Larios for 5 his actions is their fault. This is not because of 6 them. They are good kids that can have a good life. 7 The specific facts of the case outlined 8 in the record is sufficient for the Court to follow 9 the plea agreement and send the defendant to prison 10 pursuant to that plea agreement for 10 years fixed, 11 followed by 10 years indeterminate, for a 20-year 12 unified sentence. 13 There are some aggravating circumstances 14 from the psychosexual evaluation that the Court 15 should consider. In the Drennon Case, State v 16 Drennon, 126 Idaho 346, it indicates that "The 17 defendant's minimization of his culpability with 18 respect to the commission of a lewd and lascivious 19 act with his young daughter following a jury 20 conviction for the same, was a proper sentencing in 21 consideration." 22 So given those circumstances -- or given 23 that case and that proper consideration, the 24 psychosexual evaluation showed that "The defendant 25 was unable or unwilling to answer a significant</p> <p style="text-align: center;">17</p>
<p>1 caution. The specific facts of the crimes, whether 2 convicted, dismissed, or uncharged, are all before 3 the Court. 4 And the Court has all the details before 5 it, and I won't rehash those facts here in open 6 court for the victims's family to have to relive. 7 Suffice it to say, the crime itself is horrific and 8 the facts were confirmed by medical examination. 9 This is a tragic case for the victims in 10 multiple aspects of their lives. With the upheaval 11 in their lives, consistency and safety is of the 12 utmost importance of their development. And those 13 circumstances are very frustrating and sad. 14 Now, the collateral effects of such 15 selfish and continuing behaviors are very 16 far-reaching, as Ms. Larios indicated. The 17 defendant's most important role and responsibility 18 in this life was to protect and provide for his 19 children. Yet he went so far in the opposite 20 direction from that in committing this crime that he 21 must go to prison. 22 But these children are good, strong kids. 23 I have spoken with them and they can overcome this 24 with the help of their loved ones who are here 25 today. I'm confident that they will not let this</p> <p style="text-align: center;">16</p>	<p>1 number of items, that he was highly defensive, 2 non-disclosing, evasive, and may have been a highly 3 defensive attempt to prove that he had no sexual 4 problems. Further indicating that he does not 5 believe that he needs help to control his sexual 6 impulses and behaviors. And all of those factors 7 support a prison sentence. 8 "The risk assessment made in the 9 evaluation cannot be relied upon as it was based on 10 his own self-reported history, which the evaluator 11 himself indicated was non-disclosing, evasive, and 12 highly defensive. The defendant was guarded and he 13 was withholding information during the interview, 14 the testing, the polygraph, and throughout the 15 overall evaluation process. 16 "That evaluation indicated he was even 17 deceptive about the specific facts of the crime, 18 which had been confirmed by medical examination. So 19 when asked a specific question during the polygraph, 20 his reactions were determined to be consistent with 21 deception." 22 Under all of these circumstances, and in 23 consideration of all of the presentence 24 investigation, Your Honor, it is clear that the 25 defendant must go to prison. And the state would</p> <p style="text-align: center;">18</p>

<p>1 request that the Court follow the prison sentence 2 outlined in the plea agreement.</p> <p>3 THE COURT: And Mr. Hemsley, just to confirm, 4 since I was not the judge who took the plea or was 5 the presiding judge at that time, I've been looking 6 in the file to confirm, but I don't see anything 7 that indicated that this is a binding Rule 11 plea 8 agreement. Is that correct?</p> <p>9 MR. HEMSLEY: That is correct, Your Honor. 10 It's at the Court's discretion.</p> <p>11 THE COURT: All right. Thank you. 12 Did you have credit for time served 13 noted?</p> <p>14 MR. HEMSLEY: Mr. Byington's office did 15 calculate 246 days. The state is in agreement with 16 that number, Your Honor.</p> <p>17 THE COURT: Is there a request for any type of 18 restitution or is that issue reserved?</p> <p>19 MR. HEMSLEY: We would request that the Court 20 leave that issue open.</p> <p>21 We have not yet received any numbers or 22 figures from crime victim's compensation regarding 23 possible counseling that has been -- that may have 24 been going on. We need to double check that, so we 25 would request that that remain open, Your Honor.</p> <p style="text-align: center;">19</p>	<p>1 these reports really are. We had the detective who 2 is not trained, doesn't have a master's degree in 3 child psychology, takes the children and interviews 4 them himself. And he has them making admissions and 5 saying things. And once somebody locks themselves 6 into a story, it just gets better.</p> <p>7 So there are some problems with these 8 claims and investigations. The investigator will 9 take hearsay information. He will take whatever he 10 can. This particular investigator has testified 11 under oath that he doesn't investigate to get the 12 truth. He investigates to build his case.</p> <p>13 So that's why we have to be careful in 14 these kinds of cases where they don't even have 15 enough evidence to file a claim, not to get too 16 carried away because the investigation wasn't done 17 properly. Now, that doesn't mean that there aren't 18 problems. And those were all pretty much considered 19 as we worked through the plea agreements.</p> <p>20 So there's some real problems that if 21 it's not done properly, then everybody gets 22 emotional and we are not really sure exactly how 23 that's happening.</p> <p>24 Now, the problem with the PSI is that it 25 seems to be written with a bit of emotion itself.</p> <p style="text-align: center;">21</p>
<p>1 THE COURT: All right. Thank you. 2 Mr. Byington, on behalf of the defendant?</p> <p>3 MR. BYINGTON: This is always difficult for 4 defense attorney because emotions run high, and -- 5 but it's my responsibility and my duty to try to 6 balance the scales so that the emotions don't go too 7 far and that justice is not necessarily what 8 happens. So there were several things that I need 9 to point out, not in any way to take away from the 10 difficulties that the victims have had or their 11 experiences.</p> <p>12 One of the problems that we have with 13 younger children as we've had trials, and the 14 experts have testified, that it's careful to 15 question the youth victims early on by those who are 16 trained.</p> <p>17 The social -- not the master's degree in 18 child psychology are the ones who do the CARES 19 interviews. The object is to get those children to 20 the interviews because unprepared or untrained 21 interviewers will sometimes get unsolicited 22 information that may not be totally accurate.</p> <p>23 And so the problem I have in this case a 24 little bit, and with some of the other charges that 25 were not brought or claimed, is how accurate some of</p> <p style="text-align: center;">20</p>	<p>1 The comment that he was minimizing his actions and 2 doesn't care. He certainly is worried. He did not 3 want those children to have to testify at a 4 preliminary hearing. He didn't want them to suffer 5 through that.</p> <p>6 He didn't want them to have to testify at 7 a trial and suffer through that. His intent was to 8 protect those children from any additional harm from 9 what he had already caused. So he has shown some 10 calm concern and a desire to protect. I understand 11 the difficulty understanding that he has asked for 12 help. He doesn't want to harm children.</p> <p>13 There is some problems about just trying 14 to get information from someone else who hadn't been 15 around for years and years and not being able to 16 follow up, question, or confront any of those 17 statements that have been thrown in to try to make 18 this look worse. We want to be careful not to do 19 that.</p> <p>20 Now, when we look at the expert's opinion 21 on the psychosexual opinion, counsel did not say 22 that they had several different tests that they do. 23 And the tests are to make sure that these responses 24 are not being made up or incorrect. Yes, they 25 answer the questions, but there's some things built</p> <p style="text-align: center;">22</p>

APPENDIX B

<p>1 into the test.</p> <p>2 And in this one, one of the questions is,</p> <p>3 "The evaluator concluded that Ramon is a low risk to</p> <p>4 re-offend within the last 5 to 10 years when</p> <p>5 compared to other sex offenders." So he is</p> <p>6 considered a moderate risk category for recidivism</p> <p>7 and a low risk to re-offend.</p> <p>8 Also, that he was perceived to be</p> <p>9 moderately amenable for sex offender treatment, so</p> <p>10 he can be treated. He is a low risk to re-offend by</p> <p>11 the experts that interviewed him.</p> <p>12 The other thing I found really helpful in</p> <p>13 the PSI was the comment on similar charges and other</p> <p>14 people that have been sentenced. Sentencing</p> <p>15 database information on page 15. It says for those</p> <p>16 who have been charged with similar charges, the</p> <p>17 first was for rape.</p> <p>18 There were 52 offenders in the state that</p> <p>19 was evaluated since 2006. 15 were sentenced to</p> <p>20 probation with the median sentence of 3 to 10 years.</p> <p>21 Of those 52, 17 offenders were sentenced to retained</p> <p>22 jurisdiction. Again, with the median sentence of 3</p> <p>23 years and the maximum of 10. And then there were 20</p> <p>24 offenders who were sentenced to prison and the</p> <p>25 median sentence was 4 years, with the maximum of</p> <p style="text-align: center;">23</p>	<p>1 given riders, but if the Court imposes a sentence in</p> <p>2 this case, perhaps of 5 plus 15, or 5 plus 10, would</p> <p>3 be appropriate than the 10 plus 10.</p> <p>4 He will get the treatment. He is</p> <p>5 amenable to treatment, and he does want treatment in</p> <p>6 spite of a comment that we're not quite sure where</p> <p>7 it came from in the PSI. He does want treatment,</p> <p>8 and he has made it clear from the very beginning</p> <p>9 with me.</p> <p>10 So we would ask the Court to consider</p> <p>11 those details in spite of the emotion and in spite</p> <p>12 of the difficulties of this kind of case. We ask</p> <p>13 the Court to consider a lesser sentence than</p> <p>14 recommended in the plea agreement.</p> <p>15 THE COURT: Thank you, Mr. Byington.</p> <p>16 Would you like to call any of the</p> <p>17 witnesses or present any other matters in</p> <p>18 mitigation?</p> <p>19 MR. BYINGTON: No, Your Honor.</p> <p>20 THE COURT: And does your client wish to make</p> <p>21 a statement today?</p> <p>22 THE DEFENDANT: I'm sorry. I need some help.</p> <p>23 I need treatments. I can be a better person for</p> <p>24 society.</p> <p>25 THE COURT: Thank you, sir.</p> <p style="text-align: center;">25</p>
<p>1 18 years.</p> <p>2 Then for the crime of lewd and lascivious</p> <p>3 conduct, there were 53 offenders matching the</p> <p>4 defendant's information to include males between</p> <p>5 ages 54 and 65 with no prior convictions.</p> <p>6 Of the 52 offenders, 15 were sentenced to</p> <p>7 probation with the median sentence of 3 years and</p> <p>8 the maximum of 10 years. Then 17 offenders were</p> <p>9 sentenced to retained jurisdiction, with the minimum</p> <p>10 sentence of 3 years and a maximum of 10 years. 20</p> <p>11 offenders were sent to prison with the</p> <p>12 minimum/median sentence of 4 years and the maximum</p> <p>13 18 years.</p> <p>14 So where does the recommendation in the</p> <p>15 plea agreement fit with these other similar crimes?</p> <p>16 It seems to be on the bit high side for what has</p> <p>17 been done in the last 10 years. So do we think that</p> <p>18 10 plus 10 is appropriate in this case? He is a low</p> <p>19 risk. He can be treated.</p> <p>20 Now, we are not going to ask for</p> <p>21 probation. It did say he needed treatment before he</p> <p>22 was ever going to be released. We know there is a</p> <p>23 new sex offender treatment program available now in</p> <p>24 the system, so we would ask the Court to consider --</p> <p>25 well, again, there were plenty of people who were</p> <p style="text-align: center;">24</p>	<p>1 Well, the maximum penalty for each of</p> <p>2 these offense, to which you pled guilty, is life in</p> <p>3 prison. The --</p> <p>4 THE INTERPRETER: Just a Moment, Your Honor.</p> <p>5 Okay, yeah. We are okay. Thank you, Your Honor.</p> <p>6 THE COURT: And did he hear the last comment?</p> <p>7 The maximum penalty is life in prison.</p> <p>8 The Court is well aware of the state's position</p> <p>9 regarding recommendation of the sentence and wants</p> <p>10 to make record of recognition of the defendant's</p> <p>11 statement of remorse and the comments made by</p> <p>12 counsel regarding possible questions regarding the</p> <p>13 interviews, initial interviews of the victims by law</p> <p>14 enforcement, and the allegation of law enforcement</p> <p>15 not being specifically trained for that specific</p> <p>16 interview.</p> <p>17 The Court will note a waiver of the</p> <p>18 preliminary hearing and the plea of guilty obviates</p> <p>19 the necessity of any one of these victims being</p> <p>20 required to testify.</p> <p>21 THE INTERPRETER: Your Honor, apparently this</p> <p>22 is going -- let me take this off, Your Honor, so I</p> <p>23 can continue on with this. Thank you, sir.</p> <p>24 THE COURT: Is there any type of a hearing</p> <p>25 impediment or was this just simply for --</p> <p style="text-align: center;">26</p>

<p>1 THE INTERPRETER: I think it has to do with 2 this, Your Honor.</p> <p>3 MR. BYINGTON: He understands English fairly 4 well, but there's a Spanish interpreter so he would 5 understand the Spanish. It's not a hearing problem.</p> <p>6 THE COURT: It's not a hearing assist device 7 problem.</p> <p>8 MR. BYINGTON: Correct, Your Honor.</p> <p>9 THE COURT: All right.</p> <p>10 So going back a little bit, then, the 11 Court does recognize that waiver of the preliminary 12 hearing, and the plea of guilty does obviate the 13 necessity of the victims being required to testify 14 in public proceedings regarding their injuries and 15 the conduct against them by the defendant.</p> <p>16 The Court will also note the psychosexual 17 evaluation does conclude that the defendant is a low 18 risk to re-offend in the next decade or so, and that 19 he is moderately amenable to treatment. And we'll 20 also note defense counsel's comments regarding range 21 of sentencing indicated by the database information.</p> <p>22 Court's guided in its sentencing in terms 23 of the good order and protection of society. And in 24 this regard, also wants to note the impact of the 25 victims from these crimes.</p> <p style="text-align: center;">27</p>	<p>1 essentially admitted one touch, but denied any 2 penetration, which certainly is inconsistent with 3 the crime that he pled guilty to of rape.</p> <p>4 The Court will also note that these are 5 the first and second felony convictions for 6 Mr. Larios.</p> <p>7 The bottom line is this, I'm confident 8 that the state had any number of factors that were 9 important to it as they negotiated the plea 10 agreement in this matter. And the Court doesn't 11 call any of that into question, but what is 12 important is that these are the most serious crimes 13 short of causing death or severe physical injury 14 intentionally that the Court can imagine.</p> <p>15 And I consider them to be crimes of 16 violence and that's because of the intimate nature 17 of the crimes, the devastating impact that these 18 crimes have on the victims, and the victims's 19 complete and total inability to defend themselves or 20 to even have an ability to seek readdress other than 21 through this cumbersome process. But it is the 22 process that we have for determining what to do 23 under these circumstances with the perpetrator of 24 the crimes. Anything short of an imposed sentence, 25 would depreciate the seriousness of the crimes</p> <p style="text-align: center;">29</p>
<p>1 The Court finds the comments from the 2 parents credible regarding the impact, loss of 3 innocence, the noticeable lack of joyfulness or 4 sparkle in the children from the extreme conduct 5 that's been pled to, the emotional impact on the 6 children from having endured nightmares, and the 7 crimes which are with them daily, and understanding 8 that the fundamental aspects of childhood which have 9 to do with trust and safety, which are so crucial to 10 a child, have been breached and damaged for them.</p> <p>11 In terms of the GAIN evaluation, the 12 conclusion is that there is no substance abuse issue 13 to be dealt with. The mental health screen 14 indicates there are no mental health conditions that 15 require treatment.</p> <p>16 Mr. Larios is 58 years old. The PSI 17 notes there's the detention or detainer from the 18 Immigration and Customs Enforcement Agency, but the 19 Court is without any further information regarding 20 that aspect of the case and does not actually place 21 any reliance in sentencing on the fact of 22 deportation.</p> <p>23 I'm concerned, as noted in the PSI at 24 page 14, that during pretesting for the polygraph 25 exam, the psychosexual evaluation that the defendant</p> <p style="text-align: center;">28</p>	<p>1 committed by Mr. Larios against the minor child on 2 counts 1 and 2 of the information.</p> <p>3 The bottom line is this, the question of 4 the conclusions from the psychosexual regarding 5 lower risk to re-offend and an ability to treatment 6 are factors that may relate to release on parole, 7 but certainly don't lead me to consider probation at 8 this point. And those are factors that would have 9 to be developed with a treatment program, and 10 completion of that program and then subsequent 11 assessment and re-evaluation of risk at the 12 conclusion of that program. None of which would be 13 available to this Court because I don't participate 14 in this decision.</p> <p>15 But given the severity of the crimes from 16 this Court's perspective, I conclude the following 17 sentence on Count 1 is appropriate and will impose 18 the sentence in this case.</p> <p>19 Sir, I do sentence you to a unified life 20 sentence. The first 20 years fixed and determinate. 21 This will be concurrent with Count 2, which will be 22 discussed in a moment. Court costs will be 23 assessed. A nominal public fee in the amount of 24 \$250 will be required.</p> <p>25 Credit for time served is 246 days. You</p> <p style="text-align: center;">30</p>

1 are required to provide a DNA sample and right thumb
2 print impression to the State of Idaho, and are you
3 required to register as a sex offender should you
4 ever be released. The question of restitution will
5 be reserved for an initial period of 6 months from
6 today's date. Extensions can be sought if
7 necessary; otherwise, written submission of a
8 request will be considered by the Court and hearing
9 scheduled accordingly. This sentence is imposed.
10 On Count 2, which is lewd conduct with a
11 minor under age 16, the Court imposes the same
12 sentence as Count 1. A unified sentence of life,
13 the first 20 years fixed and determinate, concurrent
14 with Count 1. Court costs assessed. Credit for
15 time served the same 246 days. A sex offender
16 registration requirement also noted.
17 You do have a right to appeal both of
18 these sentences, sir. You must file your appeal
19 within 24 days of today's date, so make sure you let
20 Mr. Rylington know in a timely fashion and without
21 question that you do ask him requiring that he file
22 an appeal on your behalf if such is your wish. You
23 are remanded to custody to the Department of
24 Correction at this time, sir. Good luck to you.
25 (Proceedings concluded.)

31

1 REPORTER'S CERTIFICATE

2

3

4 STATE OF IDAHO)
5 County of Cassia) SS

6

7 I, ROXANNE K. PATCHELL, a Notary Public
8 and Certified Shorthand Reporter in and for the
9 Fifth Judicial District of Cassia County, State of
10 Idaho, do hereby certify:

11 That the above and foregoing
12 transcription was taken down by me in shorthand at
13 the time and place therein named, and thereafter
14 reduced to print by me or under my directions
15 and that the foregoing transcript contains a full,
16 true and verbatim record of the said hearing.

17 I further certify that I have no interest
18 in the event of the action.

19 WITNESS my hand this 13th day
20 of May 2016.

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23 Roxanne K. Patchell, RPR
24 Idaho CER Number 723
25 My commission expires 9/9/2017

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